

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

EVELYN RENTAS SANTIAGO,
et al.,

Plaintiffs,

v.

AUTONOMOUS MUNICIPALITY OF
PONCE, et al.,

Defendants.

CIVIL NO. 04-1642 (RLA)

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND SETTING FINAL DEADLINE FOR PLAINTIFFS TO
SUBSTITUTE MINOR'S LEGAL REPRESENTATIVE**

Defendant, the AUTONOMOUS MUNICIPALITY OF PONCE ("MUNICIPALITY"), has moved the Court to enter summary judgment dismissing the outstanding claims as untimely filed as well as barred under the Eleventh Amendment to the U.S. Constitution.

As correctly pointed out by plaintiffs, the arguments presented by defendant regarding the timeliness issue are no different than those disposed of by the Court in its previous Order Denying Motion to Dismiss (docket No. 48). Accordingly, we see no reason to revisit them.

Even though plaintiffs have failed to name the father of the minor JAN NESTOR BORRERO VARGAS as his legal representative this is a procedural matter which does not detract from the fact that the minor's claim is timely pursuant to art. 40 of the P.R. Civ. P. Code, P.R. Laws Ann. tit. 32, § 254(1) (1990).

Further, only states and those entities deemed their "alter egos" are covered by the Eleventh Amendment. Pastrana-Torres v.

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Corporacion De Puerto Rico Para La Difusion Publica, 460 F.3d 124, 126 (1st Cir. 2006). "[P]olitical subdivisions of a state, such as municipalities and counties, do not lie within the Eleventh Amendment's reach. Only the state itself and 'arms' of the state receive immunity." Metcalf & Eddy, Inc. v. Puerto Rico Aqueduct and Sewer Authority, 991 F.2d 935, 939 (1st Cir. 1993) (internal citations omitted). Defendant has not produced any evidence indicative that it should be considered an "arm" of the state and hence, be spared from liability. Therefore, we must conclude that the immunity afforded by the Eleventh Amendment does not extend to the defendant MUNICIPALITY.

Accordingly, the Motion for Summary Judgment filed by the MUNICIPALITY (docket No. 72) is **DENIED**.

Plaintiff's Motion to Disregard Defendant's Response (docket No. 79) is **GRANTED**. The Court agrees that the arguments raised by the defendant for the first time in its reply are untimely and therefore, will not be addressed by the Court.

It is further ORDERED that unless plaintiffs substitute NESTOR BORRERO MALDONADO as representative of the minor plaintiff JAN NESTOR BORRERO VARGAS **on or before July 23, 2007**, this claim shall be automatically dismissed.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 11th day of July, 2007.

S/Raymond L. Acosta
RAYMOND L. ACOSTA
United States District Judge